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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/673,778

09/29/2003

Volkert A. Zeijlemaker

P-10498.00

2478

27581

7590

07/05/2006

MEDTRONIC, INC.

710 MEDTRONIC PARK

MINNEAPOLIS, MN 55432-9924

EXAMINER

HORWAT, JENNIFER A

ART UNIT

PAPER NUMBER

3768

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

88

Office Action Summary	Application No. 10/673,778	Applicant(s) ZEIJLEMAKER, VOLKERT A.	
	Examiner Jennifer Horwat	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/23/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed on 11/23/2005 is in compliance with 37 CFR 1.97-1.98 and all references therein have been considered.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-38 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-37 of copending Application No. 10/673,934. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application

Art Unit: 3768

claims coordinating a medical device with an MRI system, including disabling the medical device during electromagnetic bursts based on the timing of detected electromagnetic radiation.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Connelly, et al (US 2002/0128689). Connelly discloses an implantable device that is immune or hardened to electromagnetic insult (paragraph 3), such as an implantable pacemaker (col 10), which conducts electrical stimulating pulses to sites within a patient's heart. In addition to housings that shield the primary device from electromagnetic interference (paragraph 68), the system also includes determining a "quiet period" for the tissue implantable device to prevent device failure during magnetic resonance imaging (paragraph 69). This includes detecting a phase timing of an external electromagnetic field and altering operations of the implanted device to avoid interference with the detected external field (paragraph 70) as well as detecting phase timing of an external magnetic resonance imaging pulse field and again altering

Art Unit: 3768

operation of the device to avoid interference (paragraph 71). The system avoids failure during magnetic resonance imaging by determining a quiet period for the implanted device and generating the magnetic resonance imaging pulse during said quiet period (paragraph 294). Conversely, when an external field is detected, operation of the device may be altered to avoid interference with the detected field or imaging pulse field (paragraph 294). This implies control of both the MRI imaging pulse and the implantable device. The system includes a control unit including a timing circuit, a processor circuit, a sensing unit, and telemetry for communication with sources external to the body (figure 3). This control unit will control the "quiet period" of the implanted device. A detection circuit is used to detect the phase timing of the external field, which allows the control circuit (element 1110) to alter the operation of the device. The system includes sensing components, including amplifiers, which, as part of the implantable device system, would be disabled when the operation of the implanted device is disabled.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 15, 26, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Connelly in view of McKinnon, et al. Connelly, as discussed above, substantially discloses the invention, as claimed. Connelly discloses interaction with the

Art Unit: 3768

MRI system thorough the telemetry system (figure 3) which allows for communication with sources external to the body and through the sensing coils which are in operable connection with the logic and control unit (figures 68 and 69). However, Connelly fails to explicitly disclose alternatives for the control signal used to determine blanking of the implantable device. McKinnon discloses a system for controlling timing of an MRI system and further discloses that a set of control signals are used to provide blanking signals for a receiver (paragraph 21). As it is well known in the art that a control signal is used to provide blanking of MRI components, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the already present control signal from the MRI system as the control signal to the implanted device in order to reduce the number of electronic circuits necessary in the compact implantable device.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

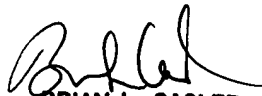
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Horwat whose telephone number is (571) 272-2811. The examiner can normally be reached on M-Th 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on (571) 272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3768

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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6/22/06


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